



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8
999 18TH STREET- SUITE 300
DENVER, CO 80202-2466
Phone 800-227-8917
<http://www.epa.gov/region08>**

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)
EVANSTON LODGE NO. 2588) **FINAL ORDER**
BENEVOLENT & PROTECTIVE ORDER OF)
ELKS OF THE USA) **DOCKET NO.: SDWA-08-2006-0060**
STANDING ROCK RESERVATION)
Respondent)
)
)

Pursuant to 40 C.F.R. §22.18, of EPA’s Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

09.18.06
DATE

SIGNED
Elyana R. Sutin
Regional Judicial Officer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

IN THE MATTER OF:)	
)	
)	COMBINED COMPLAINT AND
)	CONSENT AGREEMENT
Evanston Lodge No. 2588,)	
Benevolent and Protective Order of)	
Elks of the USA)	
)	
Respondent)	Docket No. SDWA-08-2006-0060
)	PWS ID #WY5601147
)	
_____)	

Complainant, United States Environmental Protection Agency, Region 8 (“Complainant” or “EPA”), and Respondent, Evanston Lodge No. 2588, Benevolent and Protective Order of the Elks of the United States of America (“Respondent”), by their undersigned representatives, hereby consent and agree as follows:

PRELIMINARY STATEMENT

1. This proceeding is subject to EPA's "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. part 22. ("Consolidated Rules of Practice"). This combined complaint and consent agreement (“consent agreement”) is entered into by the parties for the purpose of simultaneously commencing and concluding this matter, as authorized by 40 C.F.R. § 22.13(b), and executed pursuant to 40 C.F.R. § 22.18(b)(2) and (3).
2. Complainant has jurisdiction over this matter pursuant to section 1414(g)(3) of the Safe Drinking Water Act, as amended ("Act"), 42 U.S.C. § 300g-3(g)(3).
3. Respondent admits the allegations contained herein in this consent agreement.

4. Respondent waives its right to a hearing before any tribunal, to contest any issue of law or fact set forth in this consent agreement.
5. This consent agreement, upon incorporation into a final order, applies to and is binding upon EPA and upon Respondent, and Respondent's officers, directors, employees, agents, successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this agreement.
6. This consent agreement contains all terms of the settlement agreed to by the parties.
7. The following general allegations apply to each count of this consent agreement.
8. Evanston Lodge No. 2588, Benevolent and Protective Order of the Elks of the United States of America is a corporation under the laws of the state of Wyoming as of December 1979 and therefore a "person" within the meaning of section 1401(12) of the Act, 42 U.S.C. § 300f(12) and 40 C.F.R. § 141.2.
9. Respondent owns and/or operates a system, the Evanston Lodge Evanston Lodge No. 2588 System (the "System"), located in Uinta County, Wyoming for the provision to the public of piped water for human consumption.
10. The System has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year and is therefore a "public water system" within the meaning of Section 1401(4) of the Act, 42 U.S.C. § 300f(4), and a "non-community water system" within the meaning of 40 C.F.R. § 141.2.
11. Respondent owns and/or operates a public water system and is therefore a "supplier of water" within the meaning of Section 1401(5) of the Act, 42 U.S.C. § 300f(5) and

40 C.F.R. § 141.2. Respondent is therefore subject to the requirements of Part B of the Act, 42 U.S.C. § 300g, and its implementing regulations, 40 C.F.R. Part 141.

12. The System is supplied solely by a ground water source consisting of one well. The system serves approximately 25 persons per day through one service connection, and is operational year-round.

13. On January 14, 2004, EPA issued an Administrative Order (Docket No. SDWA-08-2004-0011) to the Respondent pursuant to section 1414(g)(1) of the Act, 42 U.S.C. § 300g-3(g)(1), citing violations of the National Primary Drinking Water Regulations (“NPDWRs”) (40 C.F.R. part 141). A copy of the Administrative Order is attached to this consent agreement and incorporated herein (Complainant’s Attachment 1).

14. The Order required Respondent, among other things, to achieve compliance with the NPDWRs that Complainant found Respondent violated.

15. On March 18 and April 7, 2005, EPA sent Respondent "Violation of Administrative Order" letters citing Respondent’s failure to comply with the Administrative Order and the NPDWRs. (Complainant’s Attachments 2 and 3).

SPECIFIC ALLEGATIONS

Count I

Failure to Monitor for Total Coliform Bacteria

16. 40 C.F.R. § 141.21 requires public water systems to monitor the water at least once per quarter to determine compliance with the Maximum Contaminant Level (“MCL”) for total coliform bacteria as stated in 40 C.F.R. § 141.63.

17. Pages 5-6, paragraph 1 of the “Order” section of the Administrative Order required Respondent to comply with the requirement of 40 C.F.R. § 141.21(a) to perform quarterly bacteriological monitoring to comply with the MCLs as stated in 40 C.F.R. § 141.63. The paragraph also required Respondent to report analytical results to EPA within the first 10 days of the end of the monitoring period, as required by 40 C.F.R. § 141.31(a).

18. Respondent failed to monitor the System’s water for contamination by total coliform bacteria during the 4th Quarter (October - December) of 2004, the 3rd Quarter (July - September) of 2005 and the 2nd Quarter (April - June) of 2006 and failed to report analytical results to EPA within the first 10 days of the end of the monitoring period, in violation of the Administrative Order and 40 C.F.R. §§ 141.21(a) and 141.31(a).

Count II
Failure to Report Noncompliance
with NPDWRs to EPA

19. 40 C.F.R. § 141.21(g)(2) requires public water systems that have failed to comply with a coliform monitoring requirement under 40 C.F.R. § 141.21 to report the monitoring violation to EPA within ten days after the system discovers the violation.

20. Page 9, paragraph 7 of the “Order” section of the Administrative Order required Respondent to comply with 40 C.F.R. § 141.21(g)(2) by reporting to EPA any failure to comply with coliform monitoring requirements within 10 days after the system discovers the violation.

21. Respondent failed to report to EPA instances of noncompliance detailed in Counts I, as set forth above, in violation of the Administrative Order and 40 C.F.R. § 141.21(g)(2).

TERMS AND CONDITIONS

22. Pursuant to section 1414(g)(3) of the Act, 42 U.S.C. § 300g-3(g)(3), and based on the nature of the violations and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is the amount of Three Hundred Fifty Dollars (\$350.00).

23. Respondent consents and agrees to pay a civil penalty in the amount of Three Hundred Fifty Dollars (\$350.00) and in the manner described below in this paragraph:

- a. Payment is due within thirty (30) calendar days from the date written on the final order, issued by the Regional Judicial Officer, that adopts this consent agreement. If the due date falls on a weekend or legal federal holiday, then the due date becomes the next business day. The date the payment is made is considered to be the date processed by Mellon Bank described below. Payments received by 11:00 AM EST are processed on the next business day.
- b. The payment shall be made by remitting a cashier's or certified check, including the name and docket number of this case, for the amount, payable to "Treasurer, United States of America," to:

Regular Mail:

Mellon Bank
EPA Region 8
(Regional Hearing Clerk)
P.O. Box 360859
Pittsburgh, PA 15251-6859

Federal Express, Airborne, or other commercial carrier:

U.S. EPA, 360859
Mellon Client Service Center Room 154-0670
500 Ross Street
Pittsburgh, PA 15251-6859

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

ABA = 021030004
TREAS NYC/CTR/
BNF=/AC-68011008

A copy of the check shall be sent simultaneously to:

Michelle Marcu (8ENF-L)
Enforcement Attorney
U.S. EPA Region 8
999 18th Street, Suite 300

Denver, CO 80202-2466

and

Tina Artemis
Regional Hearing Clerk (8RC)
U.S. EPA Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466

- c. In the event payment is not received by the specified due date, interest accrues from the date of the final consent order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received. (i.e., on the 1st late day, 30 days of interest accrues).
- d. In addition, a handling charge of fifteen dollars (\$15) shall be assessed the 31st day from the date of the final consent order, and each subsequent thirty day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date (i.e., the 121st day from the date the final consent order is signed). Payments are first applied to outstanding handling charges, 6% penalty interest, and late interest. The remainder is then applied to the outstanding principal amount.
- e. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

24. Nothing in this consent agreement shall relieve Respondent of its obligation to comply with the Act and its implementing regulations.

25. Failure by Respondent to comply with any of the terms of this consent agreement shall constitute a breach of the agreement and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.

26. Nothing in this consent agreement shall be construed as a waiver by EPA of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this agreement.

27. The undersigned representative of Respondent certifies that he is fully authorized by the parties represented to bind the parties to the terms and conditions of this consent agreement and to execute and legally bind that party to this consent agreement.

28. The parties agree to submit this consent agreement to the Regional Judicial Officer, with a request that it be incorporated into a final order.

29. Each party shall bear its own costs and attorneys fees in connection with this matter.

30. This consent agreement, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete, full and final settlement of the violations contained in this consent agreement.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8
Complainant.

Date: 9/15/2006

SIGNED

Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Date: 9-15-2006

SIGNED

Michelle Marcu
Enforcement Attorney
Legal Enforcement Program
U.S. EPA Region 8
999 18th Street, Suite 300
Denver, Colorado 80202-2466
Telephone Number: (303) 312-6921

Date: 9-14-2006

SIGNED Is

Dick Stokes, President or
Lynn Nelson, Secretary
Evanston Lodge No. 2588, Benevolent and
Protective Order of Elks of the USA

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMBINED COMPLAINT, CONSENT AGREEMENT/FINAL ORDER** in the matter of **EVANSTON LODGE NO. 2588, BENEVOLENT AND PROTECTIVE ORDER OF ELKS FO THE USA, DOCKET NO.: SDWA-08-2006-0060** was filed with the Regional Hearing Clerk on September 19, 2006.

Further, the undersigned certifies that a true and correct copy of the document was delivered to Michelle Marcu, Enforcement Attorney, U.S. EPA - Region 8, 999 18th Street - Suite 300, CO 80202-2466. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt on September 19, 2006 to:

Jack Vreeland, Registered Agent
Evanston Lodge No. 2588, Benevolent and Protective Order of
Elks of the United States of America
16 10th Street
Evanston, WY 82930

Telefaxed to:

U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268
513-487-2063

September 19, 2006

SIGNED _____
Tina Artemis
Regional Hearing Clerk

IF YOU WOULD LIKE COPIES OF THE ATTACHMENTS PLEASE CONTACT THE REGIONAL HEARING CLERK.

THIS DOCUMENT WAS FILED IN THE REGIONAL HEARING CLERK'S OFFICE ON SEPTEMBER 19, 2006.